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SUPREME COURT, U. S.

No. 937

In the

# Supreme Court of the United States

OCTOBER TERM, 1957

LECUNO OIL COMPANY,

*Petitioner,*

*against*

T. P. SMITH, JR., Individually and as Trustee, HAZEL COCKE JOBE and Husband, CLEVE B. JOBE, CAL COCKE TRAMMELL, and WINSTON TAYLOR,

*Respondents.*

## PETITIONER'S REPLY TO RESPONDENTS' ANSWER TO THE PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE SIXTH SUPREME JUDICIAL DISTRICT OF TEXAS

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The Petitioner hesitates to burden this Court with its reply to Respondents' Answer to the Petition for Writ of Ceriorari prayed for in this Court. However, the Petitioner feels that such reply might be of some benefit to this Court in the consideration of this matter.

In Respondent's Answer no attempt is made to justify the actions of the lower courts on the following points:

(1) The refusal of the Trial Court to permit the orders of the Office of Price Stabilization to be presented before the jury on the ground that the orders were hearsay and could be ignored.

(2) The refusal of the Trial Court and the other courts of Texas to take judicial knowledge of the orders of the Office of Price Stabilization when the original orders were presented wherein the price of the gas sued for was fixed at ten cents per M. C. F.

(3) The Judgment of the lower courts requiring this Petitioner to retroactively violate the rulings of the Office of Price Stabilization after the expiration of said authority, even with the admission of all parties that the Petitioner had paid the full price fixed by the orders of the Office of Price Stabilization.

(4) The Judgment of the lower courts in Texas requiring the Petitioner to violate the orders of the Federal Power Commission and pay more for gas and charge less for transportation than was being paid for gas, or received for transportation, processing and delivery at the time the Federal Power Commission issued its orders freezing all prices for the payment of gas purchased, and for payment of transportation, processing and delivering costs.

(5) The failure of the Respondents to first exhaust their remedies allowed by the Federal Power Commission rules and regulations before seeking relief in Court.

However, the Respondents in their reply to the Petition for Writ of Certiorari, and in their claims in the original proceedings, seek to take advantage and to claim a benefit from the contract between the Petitioner and the Mississippi River Fuel Supply Company despite the order of the Office of Price Stabilization fixing the price to be paid to the Respondents for gas purchased at the well-head, and despite the order of the Federal Power Commission freezing the price to be paid as of June 19, 1954, as shown in the rate schedules required to be filed by all engaged in handling gas in Interstate Commerce.

A.

The Respondents state on Page 2:

> "The Respondents herein have never at any time questioned any rulings of the Office of Price Stabilization or the Federal Power Commission."

However, the record is clear and without dispute that Respondents objected to every order of the Federal agencies on the grounds that each order was hearsay, and they secured a ruling from the Trial Judge which did not even permit the orders to be read to the jury.

It is indisputable that the judgment below gives to the Respondents three quarters of a cent per M. C. F. *more for gas than was allowed by the Office of Price Stabilization.* Respondents may not question the order, but they have secured a judgment which requires the Petitioner to violate such order!

Every royalty holder in all of Texas had basically the same kind of a lease. If the order of Price Stabilization

does not apply to Respondents, the court houses of Texa will be flooded with petitions and suits asking for mor money from every oil and gas producer because if the orde of the Office of Price Stabilization is to be ignored in on instance, it must necessarily be ignored wherever peopl desire to violate the rules of our Federal agencies. During the time that the Office of Price Stabilization was in exist ence, it fixed the price of Respondent's gas at 10¢ per M. C. F. at the well-head. *This is admitted now, but was disputed in the Trial.* Petitioner paid the full 10¢ every month. In the face of the statute prohibiting retroactive judgments, Respondents seek to recover three quarters of a cent per M. C. F. more than the 10¢ order. How can you find a more flagrant violation of a Federal statute and the orders of a Federal agency?

B.

The Federal Power Commission in 1954, issued its order under No. 174 to follow the decision which this Honorable Court issued in the *Phillips* case. It ordered the filing of all contracts as rate schedules and froze all prices at the figures shown in the rate schedules. Petitioner *paid the prices shown* in the rate schedules filed and *charged for transportation*, processing and delivering *the charges set forth in this rate schedule*. In addition, Petitioner requested the Federal Power Commission for an increase which request was refused.

If Petitioner pays to Respondents the amounts required to be paid by the judgment of the courts in Texas, it must violate the orders of the Federal Power Commission. If it

does, who is going to get it out of jail? When an order of the Federal Power Commission is held to be hearsay and is refused as evidence by a court in Texas. how can a pipe line company or a producer secure relief. The courts in Texas refused to consider the orders!

Petitioner has steadfastly, lawfully and with loyalty followed each order of the Office of Price Stabilization and the orders of the Federal Power Commission. Is Petitioner entitled to be protected by this Honorable Court? While this cause does not involve a great deal of money, it does involve the stability of the orders of the Federal agencies and the right of the citizens to be protected when they follow such orders.

The Respondents' theory is that this is a simple accounting suit. That is correct. It is a suit for an accounting for gas wherein they seek to recover more than the price fixed by the Office of Price Stabilization. They seek to recover *more than the price frozen* by the Federal Power Commission and to reduce the charge made for transportation, processing and delivery of the gas sold in Interstate Commerce from the charge shown in the *rate schedules* filed with such commission under its orders.

Respondents seek more than the Federal agencies have allowed Petitioner to pay. The Office of Price Stabilization has held that Petitioner can not pay more than the 10¢ which has already been paid. Respondents and the lower courts in Texas have said Petitioner must pay more, i.e. three quarters of a cent per M.C.F. more. Which shall prevail?

The record shows and it is admitted that Petitioner paid the amount shown by the orders which were refused to be admitted in evidence. If Petitioner does not pay, its property is subject to sale under execution. If it does pay, it violates the law! Again, we ask where can Petitioner secure relief except from this Honorable Court?

Petitioner verily believes that this Petition should be granted and the cause summarily reversed and rendered, or reversed and remanded to the Trial Court as prayed for in the Petition for Writ of Certiorari.

Respectfully submitted,

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